AFFORDABLE CARE ACT
MASSACHUSETTS IMPLEMENTATION UPDATE

December 10, 2012

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These Updates, published by the Executive Office of Health and Human Services (EOHHS) in consultation with the other state agencies involved in ACA implementation, will bring you news related to the implementation of provisions of the ACA here in Massachusetts.

Guidance

12/5/12 IRS/ Treasury issued final regulations called "Taxable Medical Devices." The regulations provide guidance on the imposition of an annual fee on medical device manufacturers and importers under ACA Reconciliation §1405.

The regulations affect manufacturers, importers, and producers of taxable medical devices. The regulation imposes an excise tax on the sale of certain medical devices by the manufacturer, producer, or importer of the device in an amount equal to 2.3% of the sale price and applies to sales of taxable medical devices after December 31, 2012.

12/5/12 IRS/ Treasury also issued Notice 2012-77, which provides interim guidance on certain issues related to the medical device excise tax.

Read the IRS Questions and Answers about the tax at: http://www.irs.gov/uac/Medical-Device-Excise-Tax:-Frequently-Asked-Questions

Read the proposed rule (which was published in the Federal Register on February 7, 2012) at: http://www.gpo.gov/fdsys/pkg/FR-2012-02-07/pdf/2012-2493.pdf

Read the rule (which was published in the Federal Register on December 7, 2012) at: http://www.gpo.gov/fdsys/pkg/FR-2012-12-07/pdf/2012-29628.pdf

12/5/12 IRS/ Treasury issued final regulations called "Fees on Health Insurance Policies and Self-Insured Plans for Patient-Centered Outcomes Research Trust Fund." The regulations implement and provide guidance on the fees imposed by the ACA on issuers of certain health insurance policies and plan sponsors of certain self-insured health

plans to fund the Patient-Centered Outcomes Research Trust Fund (the "Trust Fund"). The regulations affect the issuers and plan sponsors that are directed to pay those fees.

Created under ACA §6301, the Patient-Centered Outcomes Research Institute, or PCORI, is an independent nonprofit tasked with conducting patient-centered outcomes research and gathering public feedback to help define that term. ACA §6301 amended the Internal Revenue Code by adding a new section to establish the Trust Fund, which is the funding source for the Institute. ACA §6301 also added new sections to the Code to provide a funding source for the Trust Fund that is to be financed, in part, by fees paid by issuers of specified health insurance policies and sponsors of applicable self-insured health plans. In the rule, the IRS/Treasury sets that fee at approximately $1 per covered life in 2012 and $2 in 2013.

Read the proposed rule (which published in the Federal Register on April 17, 2012) at: http://www.gpo.gov/fdsys/pkg/FR-2012-04-17/pdf/2012-9173.pdf

Read the final regulations (which were published in the Federal Register on December 6, 2012) at: http://www.gpo.gov/fdsys/pkg/FR-2012-12-06/pdf/2012-29325.pdf

11/30/12 HHS/CMS issued a proposed rule called "Notice of Benefit and Payment Parameters for 2014". The proposed rule provides further information related to the premium stabilization policies such as the risk adjustment (§1343), reinsurance (§1341) and risk corridors programs (§1342). It also proposes key provisions governing advance payments of the premium tax credit (§1401), cost-sharing reductions (§1402), and user fees for Federally-facilitated Exchanges (§1311). Finally, it proposes a number of amendments relating to the SHOP (§1311(b)(1)(B)) and the medical loss ratio program (§10101).

The ACA established **three risk-mitigation programs** to stabilize premiums in the individual insurance market and minimize the effects of adverse selection that may occur as insurance reforms and the Exchanges launch in 2014. These programs include transitional reinsurance (§1341), temporary risk corridors programs (§1342), and a permanent risk adjustment program (§1343) to provide payments to health insurance issuers that cover higher-risk populations and to more evenly spread the financial risk borne by issuers. The transitional reinsurance program and the temporary risk corridors program, which begin in 2014, are designed to provide issuers with greater payment stability as insurance market reforms are implemented. The reinsurance program will reduce the uncertainty of insurance risk in the individual market by partially offsetting risk of high-cost enrollees. The risk corridors program, which is a federally administered program, will protect against uncertainty in rates for qualified health plans by limiting the extent of issuer losses and gains.

The rule proposes standards for advanced payments of the **premium tax credit** and for **cost-sharing reductions**. The credit is designed to make purchasing a health plan on the Exchange affordable for low and moderate income Americans by reducing a taxpayer's out-of-pocket premium cost. ACA §1401 amended the tax code to allow an advance, refundable premium tax credit to help individuals and families afford health insurance coverage. To be eligible to receive the premium tax credit, individuals and families must have incomes between 100%- 400 % FPL (or between 0% - 400% FPL if lawfully present and ineligible for Medicaid) and be enrolled in a qualified health plan (QHP) through an exchange. The individual must also be ineligible for employer or other government sponsored insurance. The amount of the premium tax credit is tied to the amount of the premium. Advance payments are made monthly under ACA §1412 to the issuer of the QHP in which the individual enrolls. ACA §1402 provides for the reduction of cost sharing for certain individuals enrolled in QHPs offered through the Exchanges and section 1412 of the Affordable Care Act provides for the advance payment of these reductions to issuers.

Beginning in 2014, as directed by ACA §1311, each state that operates an Exchange must establish a **Small Business Health Options Program (SHOP)** which will provide small employers with ways to offer employee health coverage and access to tax credits that make coverage more affordable.

The rule also proposes to amend the regulations to revise the treatment of community benefit expenditures in the **medical loss ration (MLR)** calculation for issuers exempt from federal income tax. The MLR rules established under ACA §10101 establish the minimum dollar percentage that health insurance companies must spend of consumers' health insurance premiums on medical care, not on income, overhead or marketing. Beginning in 2011, the ACA requires insurance companies in the individual and small group markets to spend at least 80% of collected premium dollars on medical care and quality improvement activities; insurance companies in the large group market are required to spend at least 85%.

Comments are due December 31, 2012.

Read the rule (which was published in the Federal Register on December 7, 2012) at: http://www.gpo.gov/fdsys/pkg/FR-2012-12-07/pdf/2012-29184.pdf

Prior guidance can be viewed at www.healthcare.gov

News

11/30/12 CMS released a list of 48 clinical episodes that will be tested in the Bundled Payments for Care Improvement Initiative authorized under §3021 of the ACA. The program aligns payments for services delivered across an episode of care, such as heart bypass or hip replacement, rather than paying for services separately as Medicare currently does. Bundled payments are intended to give doctors and hospitals new incentives to coordinate care, improve the quality of care and save money for Medicare. This initiative outlines 4 models of care, three of which would involve a retrospective bundled payment, with a price for a defined episode of care, and one model which would be paid prospectively.

Applications were due June 28, 2012 by organizations that have Medicare Demonstration experience through current or previous work. Applicants recommended by the review panel were contacted in October by CMS in discuss additional work that CMS has performed on the model definition.

For more information on the Bundled Payment for Care Improvement Initiative, click here: http://www.innovations.cms.gov/initiatives/bundled-payments/index.html

For the list of 48 clinical episodes that will be tested in this initiative, click here: http://www.innovations.cms.gov/Files/worksheets/BPCI-EpisodeDef.xls

EOHHS News

Notice of Opportunity to Participate in the Duals Demonstration Implementation Council

The Executive Office of Health and Human Services (EOHHS) is seeking individuals to serve on the Implementation Council for the Massachusetts State Demonstration to Integrate Care for Dual Eligible Individuals (Duals Demonstration).

EOHHS wishes to establish and consult a working committee to operate during the Duals Demonstration. The Implementation Council will play a key role in monitoring access to healthcare and compliance with the Americans with Disabilities Act (ADA), tracking quality of services, providing support and input to EOHHS, and promoting accountability and transparency. The Implementation Council will develop a work plan and meeting agendas. The roles and responsibilities will likely include advising EOHHS; soliciting input from stakeholders; examining ICO quality, reviewing issues raised through the grievances and appeals process and ombudsperson reports; examining access to services (medical, behavioral health, and LTSS); and participating in the development of public education and outreach campaigns.

EOHHS anticipates that the Implementation Council will meet monthly or bimonthly and will hold meetings across Massachusetts from January 2013 through December 2016.

EOHHS seeks individuals, including MassHealth members with disabilities and their family members or guardians, representatives of community-based organizations, representatives of consumer advocacy organizations, union representatives, and providers, representing the diverse communities affected by the Duals Demonstration, to serve on this Implementation Council. At least half of all Implementation Council members will be MassHealth members with disabilities or family members or guardians of MassHealth members with disabilities.

Members are expected to be available to devote the time needed to perform the roles and responsibilities of the Implementation Council, review all meeting materials in advance of meetings, attend and participate in all meetings, participate in the development of work plan deliverables, and provide advice and guidance to EOHHS. Members should possess strong analytic skills, critical reading skills, good interpersonal and communication skills, be a resident of Massachusetts, and not be employed by an Integrated Care Organization.

Interested individuals should submit a completed nomination form and letter of reference by **December 17 at 5:00 PM**. The nomination form and a frequently asked questions (FAQ) document are available online at www.mass.gov/masshealth/duals under Related Information. They will also be posted on the Commonwealth's procurement website, Comm-PASS (www.comm-pass.com). Email Geraldine.Sobkowicz@state.ma.us or call Geraldine Sobkowicz at 617-573-1678 if you need the form and FAQ sent to you or would like to request a reasonable accommodation, which may include the information in an alternative format.

Bookmark the **Massachusetts National Health Care Reform website** at: http://mass.gov/national health reform to read updates on ACA implementation in Massachusetts.

Remember to check http://mass.gov/masshealth/duals for information on the **"Integrating Medicare and Medicaid for Dual Eligible Individuals"** initiative.